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No. 92-1492

In the Supreme Court of the United States

OCTOBER TERM, 1992

JAMES L. GRATZ AND THERESE GRATZ, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the Department of Agriculture's decisions (1) to insist on third parties' waivers of liens on grain that petitioners proposed to place in a grain reserve program, and (2) to accelerate the maturity of petitioners' commodity loans, comported with the Due Process Clause.

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OPINIONS BELOW

The judgment order of the court of appeals (Pet. App. A1) is not published, but the judgment is noted at 985 F.2d 583 (Table). The opinion of the United States Claims Court (Pet. App. A2-A22) is reported at 25 Cl. Ct. 411.

JURISDICTION

The judgment of the court of appeals was entered on December 14, 1992. Pet. App. A1. The petition for a writ of certiorari was filed on March 15, 1993 (a Monday). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Department of Agriculture operates various programs that allow farmers of grain and similar products to obtain price support loans from the government. The programs involved in this case were the Price Support, Grain Reserve, and Special Producer loan programs, which were administered by the Commodity Credit Corporation (CCC) through the Agricultural Stabilization and Conservation Service (ASCS) of the Department of Agriculture. Under those loan programs, a producer could obtain a nonrecourse loan from CCC by giving CCC a lien on the commodity, which the producer then stored as collateral on the farm or in warehouses. See generally 7 C.F.R. Pt. 1421 (1987).[1] The grain reserve program also provided that eligible producers would receive storage payments if prices were below certain levels. See 7 C.F.R. 1421.749, 1421.750 (1987). The parties' rights and duties were memorialized in storage and security agreements. See 7 C.F.R. 713.49-713.50, 1421.740, 1421.900 (1987).

At the time of the events in this case, the governing regulations provided that "CCC may, at any time, accelerate the time for repayment of a price support loan indebtedness," upon giving ten days' notice of the acceleration. 7 C.F.R. 1421.6(d) (1987). The regula-

[1] The current regulations in Part 1421 apply to grain crops for the 1991 and subsequent crop years. See 7 C.F.R. 1421.1 (1993). Because the key events in this case took place in 1987 and early 1988, we cite the 1987 regulations, which covered crops from 1986 and afterward (see 7 C.F.R. 1421.1 (1987)). This case also involves loans from earlier crop years, but the regulations covering those crop years were essentially similar to the 1987 regulations.

tions did not limit the bases for calling a loan, but typical reasons for doing so included (1) deterioration of the quality of the collateral (see 7 C.F.R. 1421.15 (1987)); (2) improper certification of the quantity of the collateral (see 7 C.F.R. 1421.17(f) (1987)); and (3) unauthorized disposition of the collateral (see 7 C.F.R. 1421.17(g) (1987)). Furthermore, if a producer did not repay a loan when it was due, CCC had the right to sell or acquire title to the collateral (7 C.F.R. 1421.20 (1987)), and the producer was liable for any loss due to quantity or quality problems that CCC might experience when it sold the grain (7 C.F.R. 1421.15 (1987)).

2. a. As of May 1987, petitioners held over 150,000 bushels of grain in storage as collateral for their 13 farm storage loans from CCC. Pet. App. A38. In that month, however, petitioners' county ASCS committee informed them that inspections of grain stored at several locations had revealed quality problems, including the presence of mold, crust, and weevils. *Id.* at A36-A37. After meeting with the county committee, petitioners requested permission to rotate 20,000 bushels of corn—that is, to sell old corn in the program and to replace it with new corn. The county committee provisionally granted that request (*id.* at A7-A8, A39, A43), but a lien search disclosed two outstanding liens on the new grain that petitioners proposed to use as replacement grain (*id.* at A8). Petitioners were unable to secure a waiver from one of the two lienholders, as required by 7 C.F.R. 1421.10 (1987). Therefore, when petitioners sold the old corn, the county committee did not allow petitioners to use the proposed replacement grain in the loan program. Petitioners were unable to purchase unencumbered

replacement grain with their own money, and as a result they were no longer entitled to storage payments for 20,000 bushels of corn. Pet. 11.

Next, as several of petitioners' loans approached their July 1987 maturity dates, the county ASCS committee gave petitioners the option of extending those loans for one year. Consistent with 7 C.F.R. 1421.7 (1987), however, the county committee required that petitioners submit written proof of adequate arrangements to store their grain for the next year. Pet. App. A41-A42. Petitioners failed to furnish the county committee with the requested proof of rental agreements for storage areas that they did not own. *Id.* at A9. Meanwhile, inspections of petitioners' stored grain continued to reveal weevils, mold, and crust at several locations. *Id.* at A8, A9-A10, A11-A12, A36-A37, A49, A54-A55. Furthermore, the county committee was informed that petitioners had, without authorization, disposed of corn that secured one of their loans. *Id.* at A44. In response to these various problems, the county committee called all of petitioners' loans in September 1987 and informed petitioners that notices to deliver the collateral would be forthcoming. *Id.* at A44-A46.

The county ASCS committee promptly took possession of some of the collateral (approximately 40,000 bushels, according to petitioners (Pet. App. A30)), but not all of it. Before demanding delivery of the remaining grain, the county committee met and corresponded with petitioners numerous times over the next few months and afforded them several opportunities to improve the quality of the stored corn and to provide proof of storage arrangements. *Id.* at A10-A13. In January 1988, after petitioners failed to take

advantage of those opportunities, the county committee notified petitioners that it would reissue delivery notices for approximately 30,000 bushels, citing problems with corn quality, unauthorized disposition of corn, failure to provide storage agreements, and the fact that several more of petitioners' loans had matured in the normal course. The January letter formally notified petitioners of their right to appeal within 15 days. *Id.* at A12, A49-A51.

b. Petitioners did appeal. The county ASCS committee noted continued quality problems and generally rejected petitioners' arguments, but it did agree to reinstate certain loans. Pet. App. A12, A54-A56. However, soon thereafter, in February 1988, the committee decided to recall all of petitioners' loans, based on further reports of unauthorized disposition of collateral and of corn quality problems. The committee gave petitioners 10 days within which to repay their loans before delivery notices would be issued, and informed them that they had 15 days to appeal. *Id.* at A12-A13. Petitioners' second appeal to the county ASCS committee proved unsuccessful, and they then exercised their right (of which they had been informed) to appeal to the Wisconsin state ASCS committee. *Id.* at A13.

c. The state ASCS committee heard petitioners' appeal in April 1988. The state committee affirmed the county committee's decision to call all the loans, based on quality problems and petitioners' failure to provide storage lease agreements. The state committee reversed the determination of unauthorized disposition of collateral, however, finding that the shortage of corn was due to erroneous measurement and to shrinkage. Pet. App. A13, A58-A59. The state

committee also authorized the reinstatement of certain loans if petitioners would submit a written storage lease. *Id.* at A13, A59. When petitioners finally submitted a lease in May 1988, the state committee rescinded the calling of the affected loans. *Id.* at A14, A61-A62.

d. Petitioners then appealed to the ASCS's Deputy Administrator for State and County Operations (DASCO), as they had been informed they had the right to do. See Pet. App. A60. In November 1988, the Acting DASCO "concluded that the county committee acted properly [and] within its delegated authority." *Id.* at A65. Although affirming the earlier decisions in virtually all respects, the Acting DASCO did offer to restore any of petitioners' loans that had not been called due to deteriorating quality. *Id.* at A65-A66. Although petitioners were later reminded of their opportunity to reinstate those loans, they did not attempt to do so. *Id.* at A14.

3. Petitioners instead filed this suit in the United States Claims Court. In March 1992, the court granted the United States' motion for summary judgment, concluding that the ASCS had acted rationally, within its authority, and according to proper procedures. Pet. App. A2-A22.

The Claims Court first rejected petitioners' substantive due process claims. It noted that the county ASCS committee was authorized under 7 C.F.R. 1421.6(d) (1987) to accelerate loan repayments at any time, and concluded that the decision to do so was not arbitrary and capricious in light of the persistent quality problems with petitioners' grain. Pet. App. A16-A18. The court further held that it was rational and appropriate for the ASCS to require storage

agreements as a condition of extending petitioners' loans, and that 7 C.F.R. 1421.10 (1987) and the parties' past course of dealing had put petitioners on notice that lien waivers would be required for all stored collateral. Pet. App. A18-A19.

The Claims Court next rejected petitioners' procedural due process allegations, assuming arguendo that it could entertain such claims. Relying on *Frank's Livestock & Poultry Farm, Inc.* v. *United States*, 905 F.2d 1515 (Fed. Cir. 1990), the court held that the numerous hearings and correspondence provided at the county, state, and federal levels satisfied any applicable due process requirements. Pet. App. A20. Finally, the court rejected petitioners' contentions that their property was taken without just compensation and that the regulation describing the relationship between county ASCS committees and their inspectors was too vague. *Id.* at A21-A22.

4. Petitioners appealed to the Federal Circuit, but the court of appeals affirmed without opinion. Pet. App. A1.

ARGUMENT

Petitioners repeat their challenges to the substance and the procedure of the determinations of the Department of Agriculture. The courts below correctly rejected petitioners' claims, however, and their rulings do not conflict with any decision of this Court or of any court of appeals. Further review of the unpublished order of affirmance is therefore unwarranted.[2]

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[2] As a threshold matter, the Claims Court (now the Court of Federal Claims) lacked jurisdiction to entertain petitioners' due process claims. The Due Process Clause cannot fairly be

1. The courts below properly sustained the ASCS's substantive decisions. The scope of the lower courts' review was extremely narrow. Under 7 U.S.C. 1385 and 1429, the agency's factual determinations are "final and conclusive," so long as they are consistent with the Commodity Credit Corporation Charter Act, 15 U.S.C. 713a-4 *et seq.*, and with applicable regulations. As a result, the Claims Court properly recognized that it could review only the legal question whether the agency acted rationally and according to its authority. Pet. App. A15.

a. Petitioners claim (Pet. 11) that the county ASCS committee violated substantive due process by insisting on lien waivers at a time when, due to grain quality problems, petitioners attempted to rotate 20,000 bushels of grain in the reserve program. It is beyond dispute, however, that 7 C.F.R. 1421.10 (1987) expressly required lien waivers for all collateral, in order to protect the government's interest should a producer default. Petitioners' storage and security

interpreted as mandating payment of compensation by the United States for a violation (*United States* v. *Hopkins*, 427 U.S. 123, 130 (1976) (per curiam)), which is a prerequisite for a cause of action to be brought under the Tucker Act, 28 U.S.C. 1491 (see *United States* v. *Mitchell*, 463 U.S. 206, 215-216 (1983); *United States* v. *Testan*, 424 U.S. 392, 399-400 (1976)). To the extent that petitioners claim that the ASCS acted arbitrarily, capriciously, or contrary to regulations, their proper remedy was a suit in federal district court under the Administrative Procedure Act, 5 U.S.C. 701 *et seq.* Although contract claims properly lie in the Court of Federal Claims under the Tucker Act, petitioners do not claim that the government breached the terms of the storage and security agreements. For these reasons alone, petitioners' Tucker Act claims are without merit and do not warrant review.

agreement similarly required them to warrant that the collateral was free of all liens except those in favor of lienholders who had waived their priority as against the government. See Pet. App. A19.

Although petitioners may have had lien waivers for the grain they originally stored, the county committee properly sought assurances that the new grain petitioners sought to rotate in to replace the old grain was free of encumbrances. A lien search disclosed that the proposed replacement grain was encumbered, and petitioners were unable to obtain a waiver of one of those liens. Because petitioners could not obtain unencumbered replacement grain, the county committee properly refused to allow their new grain into the reserve program. The decision to do so plainly was not arbitrary, and it did not deny petitioners substantive due process.

b. Petitioners also contend (Pet. 19-20) that the agency acted arbitrarily and violated their substantive due process rights by calling their loans. Under 7 C.F.R. 1421.6(d) (1987), however, the agency had the right to accelerate the maturity of petitioners' loans at any time for any reason. Petitioners' loans were called due to, among other things, quality problems with stored grain and petitioners' failure to provide proof of storage leases. The administrative record fully supports the rationality of that decision.[3]

[3] The county ASCS committee also relied on its belief that petitioners had disposed of some collateral (approximately 10,000 bushels of corn) without authorization. Pet. App. A45, A49-A51. Ultimately, the state ASCS committee determined that the shortage was due to measurement error and shrinkage, but it nevertheless affirmed the county committee's decision to call all the loans. Thus, the decision to call the loans

The Claims Court correctly refused to disturb the agency's factual findings that petitioners' corn continually suffered from quality problems. Petitioners point out (Pet. 10-11, 13-14, 19-20) that inspectors rated much of their grain as "satisfactory," and only a portion as "questionable." But it is indisputable that the inspectors repeatedly described the corn as moldy, crust-covered, and weevil-infested. See, *e.g.*, Pet. App. A5-A6, A8, A36-A37, A49, A54-A55. Accordingly, as the Claims Court concluded, the county ASCS committee did not arbitrarily ignore the inspection reports and rely on its own expertise when deciding to call petitioners' loans; rather, the committee looked beyond the conclusory quality ratings to the totality of the reports. *Id.* at A16-A18.[4]

Furthermore, the Claims Court correctly concluded (Pet. App. A18-A19) that the agency acted rationally and within its authority when it required petitioners to submit written lease agreements for storage at facilities that they did not own. As the court explained, "[f]armers in the grain reserve program store government property; a requirement

did not turn on the allegation of unauthorized disposition. *Id.* at A58-A59.

[4] Petitioners obliquely suggest (Pet. 20) that the agency violated its own inspection regulations. Presumably petitioners refer to the Claims Court's observation (Pet. App. A16) that the inspectors' forms did not precisely track the criteria of the Federal Grain Inspection Service, and that the court could not be certain whether the inspectors used those criteria. The Claims Court found, however, that the inspectors' reports "were sufficiently comprehensive to provide the DASCO with a rational basis for affirming the county committee's decision to call [petitioners'] loans due to quality concerns." *Id.* at A17.

that farmers assure storage availability to the Government's satisfaction is both rational and appropriate." *Ibid.* For eleven months petitioners had failed to demonstrate that they had such leases. Ultimately, petitioners produced one lease covering a portion of their grain, and the affected loans were reinstated. *Id.* at A14.

2. Petitioners have two distinct procedural due process claims, one regarding storage payments for the 20,000 bushels of grain and one regarding the calling of their loans. The courts below correctly rejected both.

a. Petitioners contend (Pet. 15) that they were deprived of a right to continued reserve storage payments. They were not deprived, however, of any property interest cognizable under the Due Process Clause. When petitioners redeemed the 20,000 old bushels of stored corn, any property right to storage payments they might once have had for that corn was eliminated. Petitioners' true complaint is that they were prevented from receiving storage payments for the 20,000 bushels of *replacement* corn. As to that corn, petitioners were merely applicants for new benefits, not holders of an established right to benefits. As a result, the denial of the requested benefits deprived petitioners of no property interest that could in turn trigger procedural rights under the Due Process Clause. See *Lyng* v. *Payne*, 476 U.S. 926, 942 (1986).

Even if applicants for benefits could be said to have a "property" interest in potential benefits, no hearing was required in this case. Petitioners were refused participation because they failed to obtain all the lien waivers required by 7 C.F.R. 1421.10 (1987).

Petitioners never claimed that they in fact obtained lien waivers; they claimed only that lien waivers were not required. No hearing could alter the mandatory character of 7 C.F.R. 1421.10 (1987), and petitioners were not entitled to a hearing to ask the county committee to "be lenient and depart from legal requirements." *Cleveland Bd. of Educ.* v. *Loudermill*, 470 U.S. 532, 543 n.8 (1985).

b. Petitioners also contend (Pet. 15) that they were denied due process when their loans were called and, lacking cash to repay the principal, they had to deliver the corresponding collateral corn. At the outset, petitioners' property interest must be put in perspective. The grain had been pledged as collateral, and petitioners' interest in the collateral was delimited by their loan contracts and the governing regulations, under which the government had the right to call the loans at any time. If petitioners were unable to pay back the principal, the government was entitled to take possession of the collateral and devote the proceeds to pay down the amount petitioners owed. That is precisely what happened. Thus, the government simply exercised *its* property rights in the grain; it did not deprive petitioners of any distinct, unencumbered rights.

In any event, even if we assume that petitioners were "deprived" of "property" within the meaning of the Due Process Clause when their loans were called, they received all the process that was due. As explained above, before ASCS officials demanded delivery of collateral in September 1987, and again before loans were called a second time in January 1988, petitioners were notified of the problems with grain quality and of the need for them to submit

storage leases in order to obtain an extension of matured loans. The notification and opportunity to respond were sufficient at the pre-deprivation stage. See *Loudermill*, 470 U.S. at 545-546. After the deprivation, petitioners were notified of and availed themselves of the elaborate appeal rights provided for in 7 C.F.R. Pt. 780 (1987), including hearings at the county, state, and national levels. Moreover, petitioners were entitled to file a contract action in the Claims Court for damages if the government had breached its obligations under the loan agreement. The combination of these procedures readily satisfied any applicable due process requirements. See also *Frank's Livestock & Poultry Farm, Inc.* v. *United States*, 905 F.2d at 1518.

Application of the flexible three-part test of *Mathews* v. *Eldridge*, 424 U.S. 319 (1976), confirms that the Constitution required no additional procedural protections. Under that test, the relevant factors to determine the process due include the private interest at stake, the governmental interest in prompt action and in avoiding unduly cumbersome administrative burdens, and the risk of an erroneous determination. *Id.* at 335. Here, the risk of an erroneous call of the loans was nil, because the ASCS had the absolute right to call the loans at any time. Furthermore, loans are frequently called (and were here) because of fears that the producer is damaging the collateral; it would be impractical for the ASCS to wait until the end of a protracted appeals process to protect its security interest. Compare *Connecticut* v. *Doehr*, 111 S. Ct. 2105, 2115 (1991). Moreover, because loan reinstatement is available following a successful appeal, the producer's countervailing interest is only

in avoiding the temporary deprivation of the loan. While not trivial, that interest is hardly as critical as an interest in continued employment (as in *Loudermill*), welfare benefits (as in *Goldberg* v. *Kelly*, 397 U.S. 254 (1970)), or utility service (as in *Memphis Light, Gas & Water Div.* v. *Craft*, 436 U.S. 1 (1978)). No case cited by petitioners remotely suggests that they were entitled to more elaborate process.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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